

**SANITIZED DECISION--DOCKET NO. 05-565 RSV--GEORGE V. PIPER, ALJ--
SUBMITTED for DECISION on JANUARY 6, 2006--ISSUED on JANUARY 12,
2006**

SYNOPSIS

**SEVERANCE AND BUSINESS PRIVILEGE TAX-- STATUTE OF
LIMITATION ON FILING OF CLAIM FOR REFUND--**In accordance with the provisions of W.Va. Code § 11-10-14(*I*)(1), a claim for refund must be filed within three years after the due date of the return or within two years from the date on which the tax was paid, whichever period expires later, or if no return was filed, within two years from the date on which the tax was paid.

FINAL DECISION

On March 21, 2003, the Petitioner filed a claim for refund of the tax on the privilege of providing certain health care services paid by it, in the amount of \$, for the periods ending September 30, 1998 through September 30, 2002. By letter dated October 6, 2005, Respondent denied said refund claim for periods ending September 30, 1998 through September 30, 1999; however, the refund claim for the remaining period, in the amount of \$, which included interest, was being processed and refunded.

In due course, the Petitioner then timely filed a petition for refund, within sixty days of its receipt of the notice of the partial denial of the claim by the Respondent. W.Va. Code § 11-10-14(d)(1).

FINDINGS OF FACT

1. Petitioner's annual severance and business privilege tax return for FY 1998 was due by October 31, 1998, and the due date for FY 1999 was October 31, 1999. W. Va. Code § 11-13A-8. Said returns were filed as required by law.

2. Petitioner is claiming a refund in the amount of \$, for the period of July, 1998 through September, 1999.

3. Petitioner's refund claim for the period July 1, 1998 through September 30, 1999 was not filed until March 21, 2003.

DISCUSSION

W.Va. Code § 11-10-14 provides, in relevant part:

(c) No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the tax commissioner. . . . The tax commissioner shall determine the taxpayer's claim and notify the taxpayer in writing of his or her determination.

* * *

(l) Limitation on claims for refund or credit.

(1) General rule. - - Whenever a taxpayer claims to be entitled to a refund or credit of any tax (or fee), additions to tax, penalties or interest imposed by this article, or any article of this chapter, or of this code, administered under this article, paid into the treasury of this state, the taxpayer shall, except as provided in subsection (d) of this section, file a claim for refund, or credit, within three years after the due date of the return in respect of which the tax (or fee) was imposed, determined by including any authorized extension of time for filing the return, or within two years from the date the tax, (or fee), was paid, and not thereafter.

Pursuant to the aforesaid W.Va Code § 11-10-14(l)(l), Petitioner was required to file its refund claim for the periods ending September 30, 1998 and September 30, 1999 no later than October 31, 2001, and October 31, 2002, respectively. However, Petitioner's refund claim for said periods was not in fact filed until March 21, 2003, which was approximately five (5) months late. Accordingly, Petitioner's claim for refund was not timely filed for these periods.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office Tax Appeals involving a petition for refund, the burden of proof is upon the petitioner-taxpayer to show that the petitioner-taxpayer is entitled to the refund. *See* W. Va. Code § 11-10A-10(e) [2002] and W. Va. Code St. R. § 121-1-63.1 (April 20, 2003).
2. In the present action, the Petitioner has failed to carry the burden of proving that it timely filed its claim for refund for the time periods in question. *See* W. Va. Code § 11-10-14 (l)(1).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner's petition for refund of the tax on the privilege of providing certain health care services, in the amount of \$, for the periods ending September 30, 1998 and September 30, 1999 must be and is hereby **DENIED**.